

APPEAL NO. 022112  
FILED SEPTEMBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 9, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appeals, arguing that the determinations of the hearing officer are contrary to and against the great weight and preponderance of the evidence presented in this matter as to be clearly wrong and unjust. The appeal file did not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the first quarter. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search in every week during the relevant qualifying period (October 19, 2001, through January 17, 2002). The claimant was basing his entitlement to SIBs for the first quarter on an assertion of total inability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a totally inability to work, and no other records show that the injured employee is able to return to work. The carrier argues that the hearing officer improperly weighed the claimant's testimony against the other record from Dr. P, which the carrier argues showed that the claimant is able to return to work, and further argues that the hearing officer had no compelling reasons that were supported in the record to discount Dr. P's report. The carrier additionally argues that the narratives provided are conclusory and do not include detailed information concerning the claimant's limitations.

The hearing officer found that the claimant had no ability to work in accordance with the findings of Dr. Pe but also notes in his discussion of the evidence that a narrative was provided by the claimant's treating doctor stating no ability to work. The hearing officer's Statement of the Evidence notes that he found Dr. P's records unreliable and reflected retaliation for a lack of success in the rehabilitation program undergone by the claimant. We note that the claimant was released to return to work on April 20, 2001, by the "other record," a date approximately six months prior to the qualifying period. The claimant testified that he attempted to return to work but was unable to do so. The evidence reflects a report from the claimant's treating doctor dated November 19, 2001, a date within the qualifying period, which states that the claimant is unable to work. The hearing officer discounted the other record in part

because it referenced the claimant's uncooperativeness and "unwillingness to resolve disability mindset and agitation." This is contrary to the reports of both the claimant's treating doctor and referral doctor. A review of the record does not indicate that the hearing officer improperly applied the applicable rule, especially considering that the "other record" predated the qualifying period by a full six months.

Whether a claimant is entitled to SIBs based on having no ability to work is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Michael B. McShane  
Appeals Judge